

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP335

Cir. Ct. No. 2010PR70

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE: THE ESTATE OF THOMAS B. JACKOWSKI:

THOMAS AGNELLO,

APPELLANT,

V.

**ALBERT JACKOWSKI AND
ESTATE OF THOMAS B. JACKOWSKI,
BY PERSONAL REPRESENTATIVE, DAVID LANG,**

RESPONDENTS.

APPEAL from orders of the circuit court for Milwaukee County:
WILLIAM W. BRASH, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Thomas Agnello appeals the orders denying his motion to compel DNA tests to determine paternity and to modify the mediation

agreement he entered into. He also appeals the order denying his motion for reconsideration. Because the mediation agreement Agnello entered into was binding, we affirm.

BACKGROUND

¶2 Agnello lived with Thomas B. Jackowski for many years until Jackowski died intestate. A probate dispute subsequently arose between Agnello and Jackowski's brother, Albert.¹ Agnello maintains that he is Jackowski's son. Albert disagrees and asserts that Agnello is the son of John Agnello.

¶3 In the probate proceedings, Agnello moved the court for a ruling that he is the biological son of Jackowski and the heir to Jackowski's estate. The circuit court denied Agnello's motion, but ordered the parties to attend mediation. The mediation resulted in an agreement that resolved both the underlying probate case and a companion case. Both Agnello and his attorney signed the mediation agreement. Albert's attorney signed on Albert's behalf.

¶4 In July 2012, ten months after the mediation agreement was entered into, Agnello, represented by newly-retained attorneys, filed a motion to compel DNA tests and to modify the mediation agreement. The circuit court denied Agnello's motions and granted a motion by Albert to enforce the mediation agreement.

¶5 Agnello filed a motion to reconsider. In a detailed order denying the motion, the circuit court stated:

¹ In the remainder of the opinion, Thomas B. Jackowski will be referenced as Jackowski and Albert Jackowski will be referenced as Albert.

That this Court has considered the additional evidence presented by counsel for Mr. Agnello, and acknowledges that he has a disability related to mental illness; however, the Court notes that said mental illness is a personality disorder, and does not appear to affect Mr. Agnello's cognitive abilities, and further, that Mr. Agnello has never been deemed to be incompetent, and that during all of the proceedings related to this matter in which Mr. Agnello has participated, the issue of his competency was never raised until the Motion to Compel DNA Tests and Modify Mediation Agreement and Appointment of Guardian Ad Litem, and the subsequent Motion to Reconsider, filed approximately a year after the Mediation Agreement was executed.

This appeal follows.

DISCUSSION

¶6 The key issue in this case is whether the mediation agreement is binding. Agnello argues that the mediation agreement is void for two reasons: (1) Attorney David Lang, who had previously represented Agnello in other litigation, became the personal representative for Jackowski's estate without obtaining a written conflict waiver; and (2) Agnello did not have sufficient capacity to enter into a mediation agreement. According to Agnello, he attended the mediation "with ... pre[-]existing developmental disabilities uncertain as to the role of representation by David Lang and his existing Counsel. Thomas Agnello signed documents pursuant to the mediation. Thomas Agnello did not understand what he was signing and was not competent to enter into an agreement."

¶7 Albert, in response, asserts that the signed mediation agreement is binding and enforceable. He submits that the agreement completely and finally resolved every issue raised by the parties. Based on our review of the mediation

agreement, we agree. *See* WIS. STAT. § 807.05 (2011-12).² The signed mediation agreement provided, in relevant part:

No party to this agreement shall at any time hereinafter make any claims against the other, institute any lawsuit against the other or make any demands for payment from the other for any alleged reason or cause arising out of the facts and issues of the matter herein.

Each party releases the other from any and all claims and/or liability arising from this matter. This agreement is final and binding upon any and all parties to this matter and is enforceable in any court of law of general jurisdiction.

¶8 Although Agnello asserts that “[d]ue to the conflict of interest of David Lang, Counsel Lang should be disqualified and the mediation should be declared void,” he does not cite any legal authority to support the assertion that a purported conflict of interest, as he argues here, voids an otherwise valid agreement. We do not consider undeveloped arguments that are unsupported by legal authority. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶9 Insofar as Agnello argues that he did not have sufficient capacity to enter into an agreement, Albert emphasizes—and Agnello does not refute—that Jackowski’s estate was open more than two and one-half years before Agnello first asserted he was incompetent. *See Charolais Breeding Ranches, Ltd. v. FPC*

² WISCONSIN STAT. § 807.05, which applies to agreements reached as a result of alternative dispute methods, *see* Comment, 2008, provides: “No agreement ... between the parties or their attorneys, in respect to the proceedings in an action or special proceeding shall be binding unless ... made in writing and subscribed by the party to be bound thereby or the party’s attorney.”

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Secs. Corp., 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed admitted). Moreover, the circuit court, while “acknowledg[ing] that [Agnello] has a disability related to mental illness,” went on to “note[] that said mental illness is a personality disorder, and does not appear to affect Mr. Agnello’s cognitive abilities, and further, that Mr. Agnello has never been deemed to be incompetent.” We review the record in the light most favorable to the circuit court’s findings. *Rohde-Giovanni v. Baumgart*, 2003 WI App 136, ¶18, 266 Wis. 2d 339, 667 N.W.2d 718, *aff’d*, 2004 WI 27, 269 Wis. 2d 598, 676 N.W.2d 452. As such, we are not convinced that Agnello’s assertions, that he did not have sufficient capacity, voids the otherwise binding mediation agreement he entered into with the assistance of counsel.³ See *Hauer v. Union State Bank of Wautoma*, 192 Wis. 2d 576, 589, 532 N.W.2d 456 (Ct. App. 1995) (“The law presumes that every adult person is fully competent until satisfactory proof to the contrary is presented. The burden of proof is on the person seeking to void the act.”) (citations omitted).

³ Agnello asserts that a guardian *ad litem* was appointed for him by the circuit court in a prior and unrelated case. He directs this court’s attention to documents in the appendix to his brief that appear to support that a guardian *ad litem* was appointed because Agnello suffers from a developmental disability. It is unclear whether these documents are also in the appellate record, *see infra* n. 4, but in any event, the circuit court clearly accounted for the fact that Agnello has a disability. Additionally, we reiterate that Agnello was represented by counsel in the underlying proceedings. Had Agnello not had the benefit of representation, the case before us might be different.

¶10 Because we have concluded that the mediation agreement is binding, we do not reach Agnello's other appellate issues.⁴ See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

⁴ Many of the record citations set forth in the briefs are not in the proper form. Both parties' record citations would be more helpful if they would identify the document number of those parts of the record to which they direct the court's attention instead of referencing only the appendices to the briefs. See WIS. STAT. RULE 809.19(1)(d) & (e).

